

Translation

PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference Cas 2208PCT/GT	FOR FURTHER ACTION See Form PCT/IPEA/416	
International application No. PCT/EP2004/002750	International filing date (day/month/year) 17.03.2004	Priority date (day/month/year) 24.03.2003
International Patent Classification (IPC) or national classification and IPC		
Applicant NESTEC SA		

<p>1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of <u>6</u> sheets, including this cover sheet.</p> <p>3. This report is also accompanied by ANNEXES, comprising:</p> <p>a. <input type="checkbox"/> (sent to the applicant and to the International Bureau) a total of _____ sheets, as follows:</p> <p><input type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).</p> <p><input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.</p> <p>b. <input type="checkbox"/> (sent to the International Bureau only) a total of (indicate type and number of electronic carrier(s)) _____, containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).</p>																									
<p>4. This report contains indications relating to the following items:</p> <table> <tr> <td><input checked="" type="checkbox"/></td> <td>Box No. I</td> <td>Basis of the report</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. II</td> <td>Priority</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. III</td> <td>Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. IV</td> <td>Lack of unity of invention</td> </tr> <tr> <td><input checked="" type="checkbox"/></td> <td>Box No. V</td> <td>Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. VI</td> <td>Certain documents cited</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. VII</td> <td>Certain defects in the international application</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. VIII</td> <td>Certain observations on the international application</td> </tr> </table>		<input checked="" type="checkbox"/>	Box No. I	Basis of the report	<input type="checkbox"/>	Box No. II	Priority	<input type="checkbox"/>	Box No. III	Non-establishment of opinion with regard to novelty, inventive step and industrial applicability	<input type="checkbox"/>	Box No. IV	Lack of unity of invention	<input checked="" type="checkbox"/>	Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement	<input type="checkbox"/>	Box No. VI	Certain documents cited	<input type="checkbox"/>	Box No. VII	Certain defects in the international application	<input type="checkbox"/>	Box No. VIII	Certain observations on the international application
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Date of submission of the demand	Date of completion of this report
Name and mailing address of the IPEA/EP	Authorized officer
Facsimile No.	Telephone No.

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INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.

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Box No. I

Basis of the report

1. With regard to the **language**, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.
- ☐ This report is based on translations from the original language into the following language _____, which is the language of a translation furnished for the purposes of:
- ☐ international search (Rule 12.3 and 23.1(b))
- ☐ publication of the international application (Rule 12.4)
- ☐ international preliminary examination (Rule 55.2 and/or 55.3)
2. With regard to the **elements** of the international application, this report is based on *(replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report)*:
- ☐ the international application as originally filed/furnished
- ☒ the description:
- pages 1-12 _____ as originally filed/furnished
- pages* _____ received by this Authority on _____
- pages* _____ received by this Authority on _____
- ☒ the claims:
- nos. 1-21 _____ as originally filed/furnished
- nos.* _____ as amended (together with any statement) under Article 19
- nos.* _____ received by this Authority on _____
- nos.* _____ received by this Authority on _____
- ☒ the drawings:
- sheets 1/6-8/8 _____ as originally filed/furnished
- sheets* _____ received by this Authority on _____
- sheets* _____ received by this Authority on _____
- ☐ a sequence listing and/or any related table(s) – see Supplemental Box Relating to Sequence Listing.
3. ☐ The amendments have resulted in the cancellation of:
- ☐ the description, pages _____
- ☐ the claims, nos. _____
- ☐ the drawings, sheets/figs _____
- ☐ the sequence listing (*specify*): _____
- ☐ any table(s) related to sequence listing (*specify*): _____
4. ☐ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).
- ☐ the description, pages _____
- ☐ the claims, nos. _____
- ☐ the drawings, sheets/figs _____
- ☐ the sequence listing (*specify*): _____
- ☐ any table(s) related to sequence listing (*specify*): _____

* If item 4 applies, some or all of those sheets may be marked "superseded."

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.

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Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Claims	8, 9, 14-16, 18-21	YES
	Claims	1-7, 10-13, 17	NO
Inventive step (IS)	Claims	8, 9, 14-16	YES
	Claims	1-7, 10-13, 17-21	NO
Industrial applicability (IA)	Claims	1-21	YES
	Claims		NO

2. Citations and explanations (Rule 70.7)

1. Reference is made to the following documents:

D1: US-A-3 652 015 (BEALL GLENN L)

28 March 1972 (1972-03-28)

D2: US-A-2 310 633 (HEIMBURGER DOUGLAS D)

9 February 1943 (1943-02-09)

D3: WO 89/09094 A (BAUMANN KONRAD)

5 October 1989 (1989-10-05).

2.1 The present application fails to satisfy the requirements of PCT Article 33(1) because the claimed subject matter lacks novelty (PCT Article 33(2)).

Document D1 (figure 1 and column 2, line 26 to column 3, line 5) describes (the references in parentheses are to said document) a device:

- for siphoning a liquid from a packaging (10) in order to dispense it in a heated, frothed or emulsified form,
- said device comprising a venturi (58, 60, 72) suction sub-assembly (34)

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Box No. V

Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability;
citations and explanations supporting such statement

that can be connected (44) to the tubing of a pressurised vector fluid generator;

- said sub-assembly (34) comprising a body with a vector fluid supply conduit (68) that opens into a suction chamber (66) and, within the packaging, at least one suction channel (60, 62) for liquid (16),;
- said suction sub-assembly comprising a venturi (64) and securing and opening means (54, 40, 42) by means of which the nozzle can be connected to the packaging and which allow communication between the suction channel and the inside of the packaging.

2.2 The present application fails to satisfy the requirements of PCT Article 33(1) because the subject matter of claim 18 does not involve an inventive step (PCT Article 33(3)).

Document D2, considered to be the closest prior art, describes (cf. claim 18):

- a device for siphoning a liquid from a container (34) in order to dispense it in a heated, frothed or emulsified form;
- said device comprising a suction sub-assembly (3) with a venturi nozzle that can be connected to the tubing of a pressurised vector fluid generator;

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Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

- said sub-assembly (3) comprising a body having a vector fluid supply conduit (22) that opens into a suction chamber (30), and at least one channel (31) for drawing off the liquid from the container (34), which channel opens into the aforementioned container;
- the liquid feed channel (31) being formed in the nozzle body *per se*, between its base (26) and the suction chamber (30);

from which the subject matter of claim 18 differs by virtue of the following feature:

- "and the discharge conduit crossing the base of the container and forming a seal that is impervious to the liquid within said container".

These features have already been used for the same purpose (compact design) in a similar device (see D3: abstract, figure 1 and page 7). For a person skilled in the art, it is obvious to apply said features to like effect in the device according to document D2 and, in this way, to arrive at a device as per claim 18.

3. Dependent claims 2-7, 10-13 and 17-21 contain no feature which, combined with the features of any claim to which they refer, defines subject matter that meets the PCT requirements for novelty and/or inventive step (see documents D1 to D3 and the related passages cited in the search report):

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- claim 2 (novelty): D1, cover (24);
- claim 3-6 (novelty): D1, sealing portion (between (24) and (52));
- claim 7 (novelty): D1, suction chamber (66), a choke (at the inlet end of (66)), a throat (84), a mixing chamber (78), and a discharge conduit (90);
- claims 10-13 (novelty);
- claims 17 and 19-21 (inventive step).

4. The features according to claims 8-9 and 14-16 are not found in combination in the prior art, nor are they obvious in combination therefrom.